



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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November 17, 2014

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DECISION

Rocky Mountain Wild	:	Protests of the Inclusion of Certain
1536 Wynkoop St., Ste 303	:	Lease Parcels on the November 18, 2014
Denver, CO 80202	:	Competitive Oil and Gas Lease Sale

Protests Denied in Part and Granted in Part

I. INTRODUCTION

As mandated by the Mineral Leasing Act (“MLA”), as amended, 30 U.S.C. § 226(b)(1)(A), the Bureau of Land Management (“BLM”) Utah holds competitive sales, on a quarterly basis, during which eligible federal lands are offered oil and gas leasing. However, in exercising its responsibilities under the MLA, BLM has been afforded broad discretion to determine which eligible lands are appropriate for oil and gas leasing. *See id.* §226(a). For the purposes of determining which lands are appropriate for oil and gas leasing, BLM Utah has developed a multi-step review process (“lease parcel review process”)¹, which it completes for every competitive oil and gas lease sale.

The BLM Utah conducted a lease parcel review process in order to identify and consider the potential impacts of issuing oil and gas leases for certain lands within the BLM’s Price and Vernal Field Offices (“FOs”) that had been nominated for inclusion at the competitive oil and gas lease sale scheduled for November 18, 2014 (“November 2014 Lease Sale”). This lease parcel review process, which was conducted in accordance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, BLM Washington Office (“WO”) IM No. 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*, and BLM Utah IM No. 2014-006, included, among other things, coordination and consultation with various

¹ A general overview of the lease parcel review process developed and currently utilized by BLM Utah is contained in BLM Utah Instruction Memorandum (“IM”) No. 2014-006, *Oil and Gas Leasing Program NEPA Procedures Pursuant to Leasing Reform*.

federal and state agencies, Native American Tribes and members of the public, on-site visits by BLM resource specialists to each of the parcels that BLM would eventually proposed to offer for lease, multiple opportunities for public involvement, and the preparation of environmental assessment (“EA”) documents by both the Price and Vernal FOs (together “the EAs”).

On August 15, 2014, BLM Utah posted a Notice of Competitive Oil and Gas Lease Sale (“NCLS”)² which identified the parcels of land that, based upon the lease parcel review process, BLM proposed to offer for oil and gas lease at the November 2014 Lease Sale.

The NCLS also provided public notice of a 30-day public protest period, which concluded on September 15, 2014, for the parcels proposed for lease in the NCLS. During that protest period, on September 15, 2014, BLM Utah received a letter whereby Rocky Mountain Wild and WildEarth Guardians (collectively: “RMW”) jointly protested BLM’s proposal in the NCLS to offer for lease at the November 2014 Lease Sale the following parcels (“Protested Parcels”):

Price Field Office:

UT1114 – 044 (UTU90741)

Vernal Field Office:

UT1114 – 107 (UTU90752), UT1114 – 109 (UTU90753), UT1114 – 112 (UTU90755),
 UT1114 – 113 (UTU90756), UT1114 – 114 (UTU90757), UT1114 – 116 (UTU90758),
 UT1114 – 118 (UTU90759), UT1114 – 119 (UTU90760), UT1114 – 121 (UTU90761),
 UT1114 – 124 (UTU90762), UT1114 – 126 (UTU90763), UT1114 – 132 (UTU90764),
 UT1114 – 133 (UTU90765), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767),
 UT1114 – 137 (UTU90768), UT1114 – 151 (UTU90769), UT1114 – 155 (UTU90771),
 UT1114 – 156 (UTU90772), UT1114 – 157 (UTU90773), UT1114 – 169 (UTU90775),
 UT1114 – 177 (UTU90779), UT1114 – 179 (UTU90780), UT1114 – 195 (UTU90781),
 UT1114 – 209 (UTU90783), UT1114 – 214 (UTU90784), UT1114 – 216 (UTU90785),
 UT1114 – 217 (UTU90786), UT1114 – 218 (UTU90787), and UT1114 – 254 (UTU90788).

In protesting the offering of the Protest Parcels at the November 2014 Lease, RMW has generally alleged that BLM’s decision to offer the Protest Parcels at November 2014 Lease Sale violates NEPA, 42 U.S.C. § 4321 et seq., the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., and the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 et seq., and various other allegedly applicable laws, and associated regulations and policies. Descriptions of each substantive contention alleged in the protests of the November 2014 Lease Sale submitted by RMW along with the corresponding BLM responses and decisions are provided below.

² Hard copies of the NCLS were posted in the BLM Utah State Office. Electronic copies were posted and are available online on the BLM Utah Oil and Gas Lease Sales website located at:
http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas/oil_and_gas_lease.html

II. PROTEST CONTENTIONS AND BLM RESPONSES

Protest Contention: Offering parcel UT1114 – 113 (UTU90756) at the November 2014 Lease Sale would violate NEPA and FLPMA.

BLM Response: BLM Washington Office (“WO”) Instruction Memorandum (“IM”) No. 2012-043, *Greater Sage-Grouse Interim Management Policies and Procedures*, established interim management policies to be applied by BLM offices while the land use planning actions provided for in BLM WO IM 2012-044 (“WO-IM-2012-044”), *BLM National Greater Sage-Grouse Land Use Planning Strategy*, are being developed. WO-IM-2012-043 directed each BLM state office to coordinate with their respective state wildlife agency in order to identify lands constituting “preliminary priority habitat” (“PPH”) for greater sage-grouse, which it defined as follows: “Areas that have been identified as having the highest conservation value to maintaining sustainable greater sage-grouse populations. These areas would include breeding, late brood rearing, and winter concentration areas.”

RMW has alleged that parcel UT1114 – 113 (UTU90756) is located upon lands that a 2011 Utah Division of Wildlife Resources (“UDWR”) map identified as “occupied habitat” for greater sage-grouse. The BLM acknowledges that “occupied habitat” for greater sage-grouse, as designated by the aforementioned 2011 UDWR map, has been applied by BLM Utah to identify the boundaries of PPH under WO-IM-2012-043. RMW does not specifically identify any other parcels with respect its protest contention on the basis of greater sage-grouse.

Following a review of RMW’s protest, BLM has confirmed that portions of parcel UT1114 – 113 (UTU90756) occur within PPH for greater sage-grouse. In light of this discovery, BLM has decided to defer those portions of parcel UT1114 – 113 (UTU90756) that occur within PPH from offering at the November 2014 Lease Sale.

Except for the portions of parcel UT1114 – 113 (UTU90756) discussed above, after consulting with UDWR and the United States Fish and Wildlife Service (“USFWS”), and reviewing the best and most current greater sage-grouse data available for the specific lands where the Protested Parcels are located, BLM determined that the Protested Parcels contain neither greater sage-grouse nor existing habitat for greater sage-grouse. This determination, and the rationale for this determination, have been documented in the EAs.

NEPA requires BLM to take a “hard look” at the potential environmental impacts of proposed federal actions. *See e.g. Southern Utah Wilderness Alliance*, 159 IBLA 220, 234-35 (2003). This “hard look” must identify relevant areas of environmental concern, which includes the direct, indirect and cumulative impacts of the proposed action. 40 CFR 1508.8. RMW contends that BLM failed to take the requisite “hard look” at the impacts of leasing the Protested Parcels on greater sage-grouse.

Direct impacts are caused by the action and occur at the same time and place. Indirect impacts are also caused by the action, but may occur later in time or farther removed in distance. 40 CFR 1508.8. As previously described above, BLM did consider the direct and indirect impacts of leasing the Protested Parcels on greater sage-grouse. To summarize briefly, after reviewing BLM and UDWR greater sage-grouse data, examining and collecting additional data during visits to

the Protested Parcels, and coordinating with UDWR, it was determined that greater sage-grouse and greater sage-grouse habitat are not present within the Protested Parcels, except for portions of parcel UT1114 – 113 (UTU90756) which have been deferred, and, therefore, leasing the parcels would have neither direct nor indirect impacts upon greater sage-grouse.

With regard to the cumulative impacts on greater sage-grouse of leasing the Protested Parcels, 40 CFR 1508.7 provides that a “cumulative impact is the impact...which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” The BLM Utah NEPA Guidebook provides further guidance regarding cumulative impacts analysis by noting that if the proposed action would not have any direct or indirect impacts on a particular resource; there would also be no cumulative impacts on that resource. BLM Utah NEPA Guidebook at 75 (July 2010). Thus, because it was determined that greater sage-grouse and its habitat do not exist within the Protested Parcels, except for portions of parcel UT1114 – 113 (UTU90756) which have been deferred, and, therefore, leasing the Protested Parcels would have neither direct nor indirect impacts on greater sage-grouse, it may also be concluded that a cumulative impacts analysis is unnecessary. For the reasons stated above, RMW’s contention that BLM failed to adequately analyze the direct, indirect and cumulative impacts of leasing the protested parcels on greater sage-grouse is denied with respect to all lands other than those portions of parcel UT1114 – 113 (UTU90756) that have been deferred.

As RMW has stated, FLPMA imposes upon BLM an affirmative obligation to “prevent unnecessary or undue degradation” to the lands under its management. 43 U.S.C. §1732(b). RMW contends that leasing of the Protested Parcels would have impacts upon habitat for greater sage-grouse that would constitute a violation of 43 U.S.C. §1732(b).

In light of the decision above to defer the only sage-grouse habitat that existed within the Protested Parcels and, as result, the absence of sage-grouse and its habitat within the Protested Parcels that will be offered leases, RMW’s protest on the basis of FLPMA affirmative obligation to “prevent unnecessary or undue degradation” to sage-grouse is also denied with respect to all lands other than those portions of parcel UT1114 – 113 (UTU90756) that have been deferred. Clearly, if sage-grouse and its habitat are not present within the Protested Parcels offered for lease, it is reasonable for BLM to determine that the leasing of those parcels will cause an “unnecessary or undue degradation” to sage-grouse.

Protest Contention: BLM should not lease parcels within habitat for Graham’s beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*).

BLM Response: RMW has alleged that leasing of the below parcels, which it identified as occurring within habitat for Graham’s beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*), would be “arbitrary and capricious” and contribute to the future listing under the ESA for the species. RMW Protested Parcels: UT1114 – 124 (UTU90762), UT1114 – 126 (UTU90763), UT1114 – 132 (UTU90764), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 137 (UTU90768), UT1114 – 156 (UTU90772), UT1114 – 157 (UTU90773), UT1114 – 169 (UTU90775), UT1114 – 195 (UTU90781), UT1114 – 217 (UTU90786), UT1114 – 218 (UTU90787), and UT1114 – 254

(UTU90788).

As RMW has referenced in its protest, in July 2014, BLM, USFWS, and others executed a conservation agreement (“Penstemon CA”) which provided conservation measures intended to prevent a need to list the Graham’s beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*) as threatened or endangered under the ESA.

For several reasons, which will be briefly addressed below, it has been determined that BLM’s lease parcel review process, and its consideration of the potential impacts to Graham’s beardtongue and White River beardtongue are in compliance with NEPA and the objectives of the Penstemon CA.

RMW’s protest as to parcel UT1114 – 126 (UTU90763) is granted. This parcel has been identified as encompassing lands within the “conservation areas” identified in the Penstemon CA. The BLM has decided to defer the parcel from offering at the November 2014 Lease Sale in order to ensure that the conservation team provided for under Penstemon CA has an opportunity to evaluate the proposed lease parcel lands in accordance with the objectives and provisions of the Penstemon CA before a leasing decision is made.

RMW’s protest contention with respect to parcel UT1114 – 254 (UTU90788) is dismissed as moot. Prior to the posting of the NCLS, all portions of parcel UT1114 – 254 (UTU90788) that overlapped with “conservation areas” identified in the Penstemon CA were deferred from offering at the November 2014 Lease Sale.

Clearly, BLM considered the Penstemon CA, and its conservation objectives, as a part of the lease parcel review process because, as identified above, in consideration of the Penstemon CA, BLM elected to defer certain parcels and portions of parcels within the “conservation areas” identified by the Penstemo CA. With the exception of parcel UT1114 – 126 (UTU90763) and the portions of parcel UT1114 – 254 (UTU90788) discussed above, which have been deferred, no other areas of the Protest Parcels identified by RMW contain “conservation areas” identified in the Penstemon CA. As part of the lease parcel review process for the November 2014 Lease Sale, BLM informally consulted with USFWS and UDWR, and this consultation, in conjunction with the BLM’s internal lease parcel review process, lead BLM to determine that the Protested Parcels identified by RMW, except for parcels UT1114 – 126 (UTU90763) and UT1114 – 254 (UTU90788) as discussed above, lacked areas determined important for conservation by the Penstemon CA. In light of this determination, leasing the Protested Parcels, except for parcels UT1114 – 126 (UTU90763) and UT1114 – 254 (UTU90788) as discussed above, is not anticipated to adversely impact the conservation measures provided for in the Penstemon CA and, as such, will not contribute to a need for the listing of the Graham’s beardtongue or White River beardtongue as threatened or endangered under the ESA.

Protest Contention: BLM should not lease parcels within habitat for Uinta Basin hookless cactus and Pariette Cactus.

BLM Response: The RMW protest argues that the below parcels “are near Unitas Basin hookless cactus and Pariette cactus occurrences” and should not be offered for lease at the November 2014 Lease Sale. RMW protested parcel: UT1114 – 107 (UTU90752), UT1114 – 109

(UTU90753), UT1114 – 112 (UTU90755), UT1114 – 113 (UTU90756), UT1114 – 114 (UTU90757), UT1114 – 116 (UTU90758), UT1114 – 118 (UTU90759), UT1114 – 119 (UTU90760), UT1114 – 121 (UTU90761), UT1114 – 124 (UTU90762), UT1114 – 126 (UTU90763), UT1114 – 132 (UTU90764), UT1114 – 133 (UTU90765), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 137 (UTU90768), UT1114 – 151 (UTU90769), and UT1114 – 155 (UTU90771). RMW fails to provide further detail in support of this protest contention aside from an assertion that “BLM should have consulted with [US]FWS prior to leasing the parcels” and that this failure to consult along with an unspecified violation of the ESA makes BLM’s leasing decision illegal. RMW protest at 11.

First, as noted above, BLM did consult with USFWS. Further, the Vernal EA does discuss potential impacts to Unita Basin hookless cactus and Pariette cactus. Moreover, based upon the potential occurrence for the species in certain parcels, the Vernal EA and, as a result, the NCLS have applied lease notices for the protection of the species. These lease notices were developed and determined to provide adequate protection during programmatic consultation with USFWS, which occurred in association with the preparation of the Vernal ROD/RMP. Moreover, as part of the lease parcel review process for the November 2014 Lease Sale, BLM informally consulted with USFWS and through this consultation it was determined that the lease notices for Unita Basin hookless cactus and Pariette cactus, along with other protections applied to the parcels, such as the standard lease terms and the ESA stipulation applied to all parcels pursuant WO IM No. 2002-174, would provide adequate protection for the cacti.

Section 7(a)(2) of the ESA requires federal agencies to consult with USFWS, either informally or formally, in order to ensure that their actions are not likely to “jeopardize” or result in the “adverse modification of habitat” for listed species. 16 U.S.C. § 1536(a)(2). Here, through informal consultation with USFWS, and through the application of protective measures, such as lease notices, BLM has ensured that leasing the Protested Parcels will not “jeopardize” or result in the “adverse modification of habitat” for the Unita Basin hookless cactus and Pariette cactus. Accordingly, there would be no violation of the ESA as a result of BLM’s leasing of the Protested Parcels.

As set forth above, this protest contention is denied.

Protest Contention: BLM should not lease parcels within habitat for white-tailed prairie dog.

BLM Response: RMW argues that lease parcels UT1114 – 044 (UTU90741), UT1114 – 133 (UTU90765), UT1114 – 177 (UTU90779), UT1114 – 179 (UTU90780) and UT1114 – 209 (UTU90783) overlap with white-tailed prairie colonies and, as a result, the parcels should be removed from the November 2014 Lease Sale. The Price and Vernal EAs have also identified white-tailed prairie dog habitat within parcels UT1114 – 044 (UTU90741) (Price) and UT1114 – 209 (UTU90783) (Vernal) and, as provided for in the respective RMPs, the EAs have attached controlled surface use stipulations for the protection of the species. The other Protested Parcels identified by RMW were not identified as active habitat for white-tailed prairie dog during the lease parcel review process, which included BLM’s internal review of existing resource data, coordination with the UDWR and USFWS, and site-visits to the Protested Parcels by BLM staff in the spring of 2014. As an additional protective measure, a lease notice (UT-LN-49) was

applied to all of the Protest Parcels to inform potential operators that they may have to conduct white-tailed prairie dog surveys prior to any development on the leases. This will mitigate any impacts to the white tailed prairie dog colonies that may subsequently be discovered. Thus, all parcels that contain or that may contain white-tailed prairie dog habitat have been adequately protected and, as a result, this protest contention is denied.

Protest Contention: BLM should not lease within the Nine Mile Canyon and Green River Areas of Critical Environmental Concerns (“ACEC”)

BLM Response: In this protest contention RMW states that leasing parcels UT1114 – 116 (UTU90758), UT1114 – 118 (UTU90759), and UT1114 – 121 (UTU90761) within the Nine Mile Canyon ACEC and parcel UT1114 – 135 (UTU90767) within the Lower Green River ACEC is “improper and these parcels should be withdrawn.” RMW protest at 12. However, RMW fails to provide a rationale for this assertion other than a general references to the potential impacts of oil and gas development.

RMW’s protest is dismissed as moot with respect to parcels UT1114 – 116 (UTU90758), and UT1114 – 118 (UTU90759), which have been deferred in their entirety for offering at the November 2014 Lease Sale.

The BLM is required to identify and consider areas that meet the criteria of “relevance” and “importance” for designation and protection as ACECs during the land use planning process. *See* 43 CFR §16107-2; *see also* 43 U.S.C. § 1712. The key to this requirement with respect to the protest contention at hand is that it is imposed during the land use planning process. With respect to both the Nine Mile Canyon and the Lower Green River ACECs referenced in RMW’s protest, the Vernal ROD/RMP, and associated FEIS, considered the relevant and important values within the ACECs and elected to designate the ACECs as open to oil and gas leasing subject to certain protections, specifically lease stipulations, that were determined to provide adequate protection for the relevant and important values within those ACECs. The Vernal EA addressed potential impacts to the Nine Mile Canyon and Lower Green River ACECs, including the adequacy of the protective stipulations applied within those ACECs, in detail.

In essence, if BLM were to uphold this particular protest contention, it would be a decision that disregards the management designation for the subject lands in the Vernal RMP, which included designating the lands as open to oil and gas leasing, that is made outside of the land use planning process. Such an approach would be in violation of BLM’s mandate to establish land use plans and manage the public lands in manner that “conform[s] to the approved [land use] plan.” 43 U.S.C. § 1712; 43 CFR § 1610.5-3. Clearly, it would not be justified for this office to take such an approach.

For the reason set forth above, this protest contention is denied.

III. CONCLUSION AND APPEAL RIGHTS

To the extent that RMW has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and Form 1842-1 (Enclosure 1). If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. Please direct any questions regarding this decision to Justin Abernathy, Fluid Minerals Leasing Coordinator, at 801-539-4067.

/s/ Juan Palma

Juan Palma
State Director

Enclosure

1. Form 1842-1

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138